

PURCHASE AND SALE AGREEMENT

by and among

**THORNGATE COUNTRY CLUB, INC.,
an Illinois corporation**

and

**BANCO POPULAR, ILLINOIS, not personally
but solely as Trustee under the provisions
of a Trust Agreement dated December 1, 1986,
and known as Trust Number 1250**

(collectively, as Seller)

and

**CONSUMERS ILLINOIS WATER COMPANY,
an Illinois corporation**

(as Purchaser)

Effective Date: December 31, 1999

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of December 31, 1999, by and among THORNGATE COUNTRY CLUB, INC., an Illinois corporation ("Thorngate") and BANCO POPULAR, ILLINOIS, not personally but solely as Trustee under the provisions of a Trust Agreement dated December 1, 1986, and known as Trust Number 1250 ("Trustee") (Thorngate and Trustee are collectively referred to as "Seller"), and CONSUMERS ILLINOIS WATER COMPANY, an Illinois corporation ("Purchaser").

RECITALS:

- A. Seller owns fee simple title to the real property legally described on Exhibit A (the "Club Property");
- B. Adjacent to the Club Property is that certain residential real property legally described on Exhibit B (the "Residential Property");
- C. Pursuant to that certain Conditional Use Permit dated January 18, 1991 and issued by the County of Lake as Permit Number 91-248-RS, and that certain Conditional Use Permit dated July 11, 1991 and issued by the County of Lake as Permit Number 91-258-RS, the Club Property and the Residential Property are collectively referred to as the "Ivanhoe Club Planned Unit Development" (the "Development"), which is further described on that certain: (a) Amended Final Development Plan for Ivanhoe Club Planned Unit Development Phases I & II, dated June 21, 1991 attached hereto as Exhibit C; (b) Ivanhoe Club Phase II Final Plat of Subdivision, recorded on January 15, 1991, with the Office of the Recorder of Deeds for Lake County, Illinois (the "Lake Country Recorder") as Document Number 2981428 (the "Phase II Plat") (shows Phase II portion of Residential Property only); (c) Final Plat of Ivanhoe Club Phase III, recorded on April 27, 1992, with the Lake County Recorder as Document Number 3148232 (the "Phase III Subdivision Plat") (shows Phase III portion of Residential Property only); and (d) Final Plat of Ivanhoe Club Phase III Resubdivision, recorded on June 26, 1995, with the Lake County Recorder as Document Number 3687910 (the "Phase III Resubdivision Plat") together with the Phase III Subdivision Plat, the "Phase III Plat").
- D. Located throughout the Development is the Water and Sewer System (as defined below).
- E. Seller owns the portion of the Water and Sewer System which is located within the Club Property.
- F. Purchaser is a public utility that furnishes water and sanitary sewer services to various users throughout the State of Illinois.
- G. Seller wishes to sell, and Purchaser wishes to purchase the Club Water and Sewer Assets (as defined below) on the terms, conditions and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants, representations, warranties and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Purchase and Sale of Acquired Assets. Subject to the terms, conditions and provisions set forth in this Agreement, Purchaser shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to Purchaser at the Closing (as defined below) the Club Water and Sewer Assets.

The "Club Water and Sewer Assets" are defined as all of Seller's assets, properties and rights, whether tangible or intangible, real, personal or mixed, which are held or used by Seller with respect to the distribution of potable water and the collection, treating and disposing of waste water within the Development. Without limiting the generality of the foregoing, the Club Water and Sewer Assets include the following:

(a) **The Club Water and Sewer System.** All of Seller's right, title and interest in and to the water and sanitary sewer system serving the Development (the "Water and Sewer System") including:

- (i) the potable water supply system consisting of a water treatment plant, all wells, reservoirs, aquifers, distribution lines, service lines from the water distribution line to the curb stop, including the curb stop and the curb box, and such other equipment and facilities used to supply potable water to the Development;
- (ii) the waste water treatment system consisting of all purification lagoons, storage stations, chlorination facilities, groundwater monitoring wells, force mains, comminutors, lift stations, pumping equipment, aeration equipment, collection lines (including the 12 inch effluent line from the lagoon system to the Irrigation Pump Station [as hereinafter defined] [the "Effluent Line"]), manholes, and such other equipment and facilities used to provide waste water treatment services to the Development;
- (iii) meters used to measure usage of the potable water system and the waste water treatment system.

The items described in (i), (ii) and (iii), to the extent owned by Seller, are collectively referred to herein as the "Club Water and Sewer System". With the exception of the Lagoon Tract (as hereinafter defined) and the Easements (as hereinafter defined), and notwithstanding anything to the contrary herein, all real property interests which Seller shall be obligated to convey hereunder shall be limited to the functional components of the Club Water and Sewer System and shall exclude all earthen areas located above, below or around such system and the term "Club Water and Sewer System", as used herein, shall be deemed to incorporate such limitation (the "Functional Component Limitation").

(b) Easements, Rights-of-Way, Licenses. (i) Pursuant to an assignment in a form to be agreed upon by Seller and Purchaser at Closing (the "Assignment of Easements"), all of Seller's right, title and interest, to the extent assignable, in and to any easements, rights-of-way, leases, licenses or similar rights of use previously reserved or granted to Seller with respect to real property other than the Club Property (including, without limitation, the Residential Property) which are or may be used in connection with the Club Water and Sewer System, and (ii) pursuant to a grant of easement in a form to be agreed upon by Seller and Purchaser at Closing (the "Grant of Easement"), all other easements, rights-of-way, licenses or similar rights of use on, over or under the Club Property which are necessary to construct, operate, use, inspect, maintain, repair, replace, reconstruct, remove, or exercise any other incidents of ownership concerning the Club Water and Sewer System, together with a right of access for such purposes (except for access to the potable water reservoir located near the second hole on the 18 hole golf course on the Club Property) (all of the easements provided for under the Assignment of Easements and Grant of Easement are collectively referred to herein as the "Easements").

(c) Contractual Rights, Leases, Licenses, Permits. All of Seller's right, title and interest in and to any contracts, leases, licenses, permits, authorizations, approvals (collectively, "Contracts") and any intangible property relating to the ownership or operation of the Club Water and Sewer System (collectively, "Contracts and Intangible Property").

(d) Lagoon Tract. The real property referred to as "Parcel D" on Exhibit A together with all buildings, improvements, fixtures and equipment situated on Parcel D and all appurtenances thereto (all of the foregoing are collectively, the "Lagoon Tract"), subject to the Right of First Offer Regarding the Lagoon Tract (as defined below).

(e) Right of First Offer. The Right of First Offer Regarding the Adjacent Tract (as defined below).

(f) Miscellaneous Assets. All of Seller's right, title and interest in and to all supplies and miscellaneous assets, including keys and lock combinations, customer and supplier lists, customer records, meter readings, billing information, files, data, plans, maps and all other properties and assets that are related to or used or useful in connection with the Club Water and Sewer System.

Anything in this Agreement to the contrary notwithstanding, the Club Water and Sewer Assets do not include and in no event shall Purchaser be deemed to have assumed any obligation with regard to any of the following except as expressly provided otherwise in Section 20(d): (i) the irrigation pump station located on the golf course portion of the Club Property (the "Irrigation Pump Station") and the irrigation system serving the Club Property (the "Club Irrigation System"), and (ii) stormwater detention facilities or improvements.

Seller shall convey the Club Water and Sewer Assets to Purchaser free and clear of all mortgages, liens, pledges, security interests, claims, restrictions and encumbrances (collectively, "Encumbrances") except for the Permitted Exceptions (as defined below).

2. Purchase Price and Earnest Money. The purchase price for the Club Water and Sewer Assets shall be ONE HUNDRED DOLLARS (\$100) (the "Purchase Price"). The parties

acknowledge that, on January 6, 1999, Purchaser deposited, as earnest money, TWENTY-THOUSAND DOLLARS (\$20,000) (the "Earnest Money Deposit") into that certain interest bearing Strict Joint Order Escrow, Escrow Trust Number 98141153, by and among Purchaser, Seller, and Chicago Title and Trust Company (the "Escrowee"). All interest earned on the Earnest Money Deposit shall be for the benefit of Purchaser. If the transaction contemplated by this Agreement closes in accordance with its terms, then at the Closing the Earnest Money and all interest earned thereon (collectively, the "Earnest Money") shall be applied against the Purchase Price, plus or minus prorations and adjustments provided for herein, and thereafter, the balance of the Earnest Money shall be promptly delivered to Purchaser. If the transaction contemplated in this Agreement does not close for any reason other than a Default by Purchaser, as described in Section 16(b), then the Earnest Money, shall be promptly delivered to Purchaser.

3. Due Diligence; Right to Terminate.

(a) Seller shall give Purchaser, its officers, employees, accountants, counsel and other agents (collectively, "Purchaser's Agents") free and full access to and the right to inspect, during normal business hours, all of the properties and documents relating to the Club Water and Sewer Assets, and shall permit the Purchaser's Agents to consult with the officers, employees, accountants, counsel and other agents of Seller for the purpose of making such investigations, provided that the investigations do not unreasonably interfere with the business or operations of Seller.

(b) Within fifteen (15) days after the Effective Date, Seller shall have delivered to Purchaser true, correct and complete copies of the following items to the extent in Seller's possession:

(i) All title documents and reports regarding title to the Water and Sewer System.

(ii) All plans and maps concerning the location, construction and operation of the Water and Sewer System.

(iii) All Contracts.

(iv) A list of all lots for which as of the Effective Date there has not been paid the \$12,000 Access Fee (as such term is defined in that certain Declaration of Covenants, Conditions and Restrictions for the Mutual Water and Sewer System of the Ivanhoe Club, by and among Red Top Development Corporation, an Illinois corporation ("Red Top"), Capitol Bank of Chicago, as Trustee under Trust #1250 ("Capitol Trustee"), Brook-Ridge Development, Inc., an Illinois corporation ("Brook-Ridge") and Thorngate, recorded January 15, 1991, with the Lake Country Recorder as Document Number 2981431 (the "Water and Sewer Declaration" and that certain Amended and Restated Memorandum of Contract, dated as of December 21, 1990, by and among Thorngate, Capitol Trustee, Brook-Ridge, Red Top, and the Ivanhoe Development Limited Partnership, an Illinois limited partnership ("IDL"), recorded January 16, 1991, with the Lake Country Recorder as Document Number 2981799).

(v) The most recent real estate and personal property tax bills and assessments pertaining to the Club Water and Sewer System and the Lagoon Tract.

(vi) All environmental reports which have been or are being prepared with respect to all or any portion of the Club Water and Sewer System.

(vii) All other documents or information with respect to all or any portion of the Club Water and Sewer Assets which may be material to a purchaser of the same (including a list of any material defects concerning the Club Water and Sewer System) and any other information reasonably requested by Purchaser.

(c) If, based upon Purchaser's investigations, Purchaser is not satisfied with the Club Water and Sewer Assets, Purchaser shall have the right to terminate this Agreement by delivering written notice of termination to Seller within sixty (60) days of the Effective Date, in which event the Earnest Money shall be promptly delivered to Purchaser, and thereafter, neither Seller nor Purchaser shall have any further rights or obligations under this Agreement.

4. **"As-Is Condition of the Assets".** Purchaser acknowledges and agrees that upon the Closing, subject to the terms and conditions of this Agreement, Seller shall convey the Club Water and Sewer Assets "as is, where is," with all faults, and that except for the representations and warranties provided for in this Agreement, Seller does not make and shall not be deemed to have made any warranties of merchantability, fitness for a particular purpose, habitability or any other warranty with respect to the Club Water and Sewer Assets. The terms and conditions of this Section 4 shall survive the Closing and the delivery of the conveyance documents described herein.

5. **Certain Covenants of Seller.**

Up to and including the Closing Date (as defined below):

(a) Seller shall operate its business with respect to the Club Water and Sewer Assets in the ordinary course consistent with its past practice, including preserving present relationships with customers, suppliers and service providers.

(b) Seller shall maintain the Club Water and Sewer Assets free from waste and neglect and otherwise in accordance with its past practice.

(c) Seller shall maintain in full force and effect liability, casualty and other insurance with respect to the Club Water and Sewer Assets covering risks and in amounts which are in accordance with its past practice. Seller shall promptly advise Purchaser in writing of any change in insurer or type of coverage with respect to such insurance.

(d) Seller shall comply with all laws, ordinances, rules, regulations, rulings, orders, decrees, judgment or requirement of any governmental authority and any covenants, conditions and restrictions (all of the foregoing are collectively, "Laws") applicable to Seller or the Club Water and Sewer Assets.

(e) Seller shall not do, suffer or permit, or agree to do, any of the following:

(i) Enter into any transaction or grant any interest with respect to any portion of the Club Water and Sewer Assets except (a) in favor of Purchaser as contemplated in this Agreement, or (b) in the ordinary course of operations but in no event so as to encumber the Club Water and Sewer Assets on the Closing Date unless such encumbrance is provided for herein or approved in writing by Purchaser;

(ii) Perform or permit any act which will diminish or otherwise affect Purchaser's interest under this Agreement or will prevent Seller's full performance of its obligations under this Agreement except as required by Law; and

(iii) Make or commit to make without the prior written consent of Purchaser any capital expenditures regarding the Club Water and Sewer Assets in excess of \$500 for any single item or \$2,500 in the aggregate, except in the case of an emergency, in which case, such advance consent shall not be required but Seller shall be required to give Purchaser notice of the expenditure as soon as reasonably possible.

(f) Seller shall make a good faith effort to promptly cause (i) a title company selected by Purchaser (the "Title Company") to insure good and marketable title in Purchaser to the Easements and the Lagoon Tract; (ii) the full execution of the Ancillary Documents (as defined below), and (iii) the receipt of the ICC Approval (as defined below) to the extent Seller's cooperation is reasonably required in connection with such approval.

(g) Seller shall cooperate with Purchaser in sending any notices to Seller's customers, suppliers or service providers with regard to the Club Water and Sewer Assets as Purchaser deems reasonably necessary in connection with the transaction contemplated under this Agreement.

(h) Seller shall preform and comply in all material respects with all agreements, covenants, representations, and conditions required pursuant to the terms of this Agreement to be preformed, made or satisfied by Seller prior to the Closing Date.

(i) Seller shall notify Purchaser promptly if Seller becomes aware, prior to the Closing Date, of any information, transaction or occurrence which caused or may cause Seller to breach any of its covenants, representations, warranties or other obligations under this Agreement.

Notwithstanding the foregoing in Section 5(a), 5(b) and 5(d), to the extent that under the terms of that certain Ivanhoe Club Planned Unit Development Water and Sanitary Sewer System Maintenance Agreement, dated as of the date hereof, by and among Seller and the Water and Sewer Association, collectively as owner, and Purchaser as agent (the "Maintenance Agreement"), Purchaser is expressly obligated to provide certain services which by their very nature are substantially similar to the obligations required of Seller under Section 5(a), 5(b) or 5(d), then the terms of the Maintenance Agreement shall govern and Seller shall be relieved of its liability under Section 5(a), 5(b) and/or 5(d) with respect to such obligations subject to the terms of the Maintenance Agreement.

6. **Representations and Warranties of Seller.** To induce Purchaser to execute and deliver this Agreement and to perform its obligations hereunder, and without regard to any independent investigation of Purchaser, Seller represents and warrants to Purchaser on and as of the Effective Date, as follows:

(a) **Due Authorization; Valid and Binding.** With the exception of any approval required under applicable Laws, Seller has all requisite power and authority to execute, deliver and perform this Agreement and all related agreements, and to perform all of its obligations under this Agreement and all related agreements. The execution and delivery of this Agreement and all related agreements and the transactions contemplated thereunder have been or will be by the Closing Date duly authorized by all requisite action on the part of Seller. This Agreement and all related agreements constitute valid and binding obligations of Seller, enforceable in accordance with their terms.

(b) **No Conflicts.** Provided that the conditions precedent set forth in Section 9(a) and Section 9(d) are satisfied, the execution, delivery and performance of this Agreement and related agreements shall not (i) conflict with or breach any agreement to which Seller is a party or to which any of the Club Water and Sewer Assets are bound; (ii) violate any Law applicable to Seller or to which any of the Club Water and Sewer Assets are bound; or (iii) require the authorization from any other third party.

(c) **No Legal Obstruction, Litigation.** To the best of Seller's knowledge, no Law exists which would prevent Purchaser from using the Club Water and Sewer Assets for the purposes for which they are presently used by Seller or intended to be used by Purchaser. No claim, action, suit, proceeding or investigation by or before any court or other governmental authority has been served upon or, to the best of Seller's knowledge, threatened with respect to Seller, the Club Water and Sewer Assets, or the transactions contemplated under this Agreement.

(d) **Compliance with Laws.** To the best of Seller's knowledge, (a) Seller is in compliance with all applicable Laws; and (b) the Club Water and Sewer Assets and the operations associated with them have not been and are not in violation of any applicable Laws and Seller has not received any notice regarding a violation or potential violation of such Laws.

(e) **No Material Adverse Conditions.** To the best of Seller's knowledge, there are no conditions or developments existing or threatened which would have a material adverse effect on the Club Water and Sewer Assets.

(f) **Title to Assets.** Seller holds good and marketable title to the Club Water and Sewer Assets and shall convey the same to Purchaser free and clear of all Encumbrances except for those set forth in title commitments or surveys ordered by Purchaser and expressly approved by Purchaser in writing (the "**Permitted Exceptions**"). Notwithstanding the foregoing, the Permitted Exceptions shall include the items set forth on **Exhibit D** and all other matters set forth in a title commitment or survey to the extent that such exceptions do not materially interfere with Purchaser's intended ownership and use of the Club Water and Sewer Assets consistent with Seller's past practice. Notwithstanding the foregoing, Seller shall, prior to or at the Closing, cause the removal of all monetary liens and encumbrances of a definite and ascertainable amount

affecting any portion of the Club Water and Sewer Assets arising by or through the Club (collectively, "Monetary Liens").

(g) Rights to Facilities. Seller holds good and valid rights to occupy and to obtain access to all areas where the mains and other facilities of the Club Water and Sewer System are located and such rights shall be effectively conveyed to Purchaser pursuant to the grant of easements and assignment of easements described in Section 11(a)(3) herein.

(h) Condition of the Assets. The tangible property included in the Club Water and Sewer Assets has not sustained material damage or otherwise required significant repair in the past twelve (12) months, or if such damage has occurred or repair was required, then the property has been fully repaired to the extent required to cause it to operate in the same condition it existed prior to the occurrence of such damage or cause for repair.

(i) Rights Under Recorded Documents, Contracts and Intangible Property. To the best of Seller's knowledge, (a) the Declaration of Covenants, Conditions and Restrictions for Ivanhoe Club P.U.D. recorded January 15, 1991, with the Lake Country Recorder as Document Number 2981430 (the "Phase II Declaration"), (b) the Water and Sewer Declaration, (c) the Declaration of Covenants, Conditions and Restrictions for Phase III of the Ivanhoe Club P.U.D. recorded April 27, 1992, with the Lake Country Recorder as Document Number 3148233 (the "Phase III Declaration"), (d) the Phase II Plat, and (e) the Phase III Plat which collectively, among other things, grant or reserve to Seller easements that are used or useful in connection with the Club Water and Sewer System and all documents constituting the Contracts and Intangible Property constitute valid and binding obligations enforceable in accordance with their terms and are in full force and effect. To the best of Seller's knowledge, no defaults exist under such documents and no event has occurred or condition exists which, with the passage of time or giving of notice, or both, would constitute a default by either Seller or any third party.

(j) Contracts with Suppliers and Service Providers. Seller is not a party to any contract for the purchase of, or payment for, supplies, equipment or services related to the Club Water and Sewer System, except such contracts which shall not survive the Closing.

(k) Environmental Laws.

(i) Compliance with Law. To the best of Seller's knowledge, Seller has been and is in compliance with all Environmental Laws (as defined below) and has not received written notice of an alleged violation of an Environmental Law.

(ii) Adequacy of Permits. Seller has obtained and continues to possess all permits, licenses, approvals or other authorizations which are required under the Environmental Laws, has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record-keeping requirements under the Environmental Laws.

- (iii) Compliance with Environmental Laws. To the best of Seller's knowledge, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Club Water and Sewer Assets which may impede or prevent continued compliance with the Environmental Laws or which may give rise to any civil or criminal liability under the Environmental Laws.
- (iv) Complete Disclosure. Seller has provided to Purchaser complete disclosure of all past and present Environmental Conditions (as defined below) pertaining or relating to the Club Water and Sewer Assets.
- (v) Compliance with Decrees. Seller has been and is in compliance with all orders, decrees, judgments and notices delivered to Seller under or in connection with the Environmental Laws.
- (vi) Cooperation for Compliance. Seller shall cooperate with Purchaser in demonstrating any past or present compliance, abatement, requirement or correction under the Environmental Laws pertaining or relating to the Club Water and Sewer Assets in connection with any application for the transfer, renewal, or issuance of any permits, licenses, approvals or other authorizations in favor of Purchaser or to satisfy any regulatory requirements involving use of the Club Water and Sewer Assets.

As used herein, the term "Environmental Laws" shall include all federal, state and local environmental laws and regulations, including, without limitation, the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat., 1613, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, the Toxic Substance Control Act, 15 U.S.C. §2601 et seq. and regulations related thereto. Any reference to legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments or notices issued thereunder.

As used herein, the term "Environmental Condition" shall mean any condition or circumstance related to the Club Water and Sewer Assets of which Seller has been made aware by notice, whether created by Seller or any other party, which (i) required or requires abatement or correction under an Environmental Law, or (ii) has given or may give rise to any civil or criminal liability under an Environmental Law, or (iii) has created or may create a public or private nuisance, including the presence of asbestos, PCB's, hazardous substances, radioactive waste or radon, on, in or about the Club Water and Sewer Assets.

(l) Customer Records. The data contained in the customer records provided to Purchaser is true, correct and complete.

(m) No Failure to Disclose. Seller has not knowingly failed to disclose to Purchaser any material fact of which Seller is aware pertaining to any fact or circumstance, the existence or

absence of which has or might reasonably be foreseen to have a material adverse effect on the current use, condition or value of all or any portion of the Club Water and Sewer Assets.

(n) Beneficial Interest. Thorngate owns 100% of the beneficial interest in Trustee and has the power of direction under the Trust Agreement dated December 1, 1986 and known as Trust Number 1250.

(o) Adequacy of Assets Pursuant to this Agreement. Upon the consummation of the sale of the Club Water and Sewer Assets in accordance with the terms of this Agreement, Purchaser shall have acquired all of Seller's assets which are used or useful in order to own and operate the Club Water and Sewer System in a manner substantially similar to the ownership and operation of such system prior to the Closing Date.

(p) Parties Having an Ownership Interest with Respect to the Water and Sewer System. To the best of Seller's knowledge, the only parties, in addition to itself, which potentially have an ownership interest in the Water and Sewer System are: the Ivanhoe Club Mutual Water and Sewer System, Inc. (the "Water and Sewer Association"); Brook-Ridge; Laser Land Development Company ("Laser"); First State Bank and Trust Company of Park Ridge, as Trustee under Trust #2035 ("First State Bank Trustee"); IDLP; the Ivanhoe Club Property Owners Association, Inc. (the "Phase II Association"); and the Ivanhoe Club Phase III Property Owners Association, Inc. (the "Phase III Association").

(q) Adequacy of Assets Pursuant to this Agreement and the Ancillary Documents. To the best of Seller's knowledge, upon the consummation of the sale of the Club Water and Sewer Assets in accordance with the terms of this Agreement, and upon the consummation of the sales of the portions of the Water and Sewer System located within the Residential Property in accordance with the terms of the documents described in Section 8(a)(i), (ii), (iii), (iv), and (v), Purchaser shall have acquired all right, title and interest to the Water and Sewer System and shall be able to operate such system in a manner substantially similar to its operation prior to the Closing Date.

(r) Dissolution of Red Top. To the best of Seller's knowledge, Red Top dissolved as a corporation and no former shareholder, representative, or agent of Red Top claims or has claimed an interest in the Development since said dissolution.

References in this Agreement to the "best of Seller's knowledge" and words of similar import shall mean the actual knowledge of Seller as of the Effective Date, and to the extent Seller is required to remake representations and warranties herein on the Closing Date, as of the Closing Date, all without independent investigation or inquiry.

The provisions of this Section 6 shall survive the Closing and delivery of the conveyance documents described herein subject to the provisions of Section 16(c) herein.

7. Representations and Warranties of Purchaser. To induce Seller to execute and deliver this Agreement and to perform its obligations hereunder, Purchaser hereby represents to Seller on and as of the Effective Date, as follows:

(a) **Due Authorization; Valid and Binding.** With the exception of the ICC Approval (as hereinafter defined) and any other approval required under applicable Laws, Purchaser has all requisite power and authority to execute, deliver and perform this Agreement and all related agreements, and to perform all of its obligations under this Agreement and all related agreements. The execution and delivery of this Agreement has been and all related agreements and the transactions contemplated thereunder have been or will be by the Closing Date duly authorized by all requisite action on the part of Purchaser. This Agreement and all related agreements constitute valid and binding obligations of Purchaser, enforceable in accordance with their terms.

(b) **Purchaser Status.** Purchaser is a "public utility" as such term is defined under the Illinois Public Utilities Act, § 220 ILCS 5/3-105 and furnishes water and sanitary sewer services to various users throughout the State of Illinois.

(c) **No Conflicts.** Provided that the conditions set forth in Section 8 are satisfied, the execution, delivery and performance of this Agreement and related agreements shall not (i) conflict with or breach any agreement to which Purchaser is a party; (ii) violate any Law applicable to Purchaser; or (iii) require the authorization from any other third party.

(d) **No Legal Obstruction, Litigation.** To the best of Purchaser's knowledge, no claim, action, suit, proceeding or investigation by or before any court or other governmental authority has been served upon or, to the best of Purchaser's knowledge, threatened with respect to Purchaser or the transactions contemplated under this Agreement, or if so served upon or threatened with respect to Purchaser, would not have a material adverse effect on Purchaser's ability to perform its obligations under this Agreement.

References in this Agreement to the "best of Purchaser's knowledge" and words of similar import shall mean the actual knowledge of Purchaser as of the Effective Date, and to the extent Purchaser is required to remake representations and warranties herein on the Closing Date, as of the Closing Date, all without independent investigation or inquiry.

The provisions of this Section 7 shall survive the Closing and the delivery of the conveyance documents described herein subject to the provisions of Section 16(c) herein.

8. Conditions Precedent to Purchaser's Obligation to Close.

The obligation of Purchaser under this Agreement to consummate the transactions contemplated herein are subject to the satisfaction, at or before the Closing, of all of the following conditions, any one or more of which may be waived in whole or in part in writing at the option of Purchaser:

(a) The following agreements, all of which shall be in form and substance satisfactory to Purchaser, shall be validly and fully executed by the parties to the agreements:

(i) Agreement of Purchase and Sale, by and between the Water and Sewer Association, as seller, and Purchaser, as purchaser, and all agreements contemplated thereunder.

(ii) The Phase II Association and the Water and Sewer Association shall have consented in writing to the transfer of the south 1400 feet of the Club Property and equipment thereon to Purchaser in accordance with the terms of this Agreement.

(iii) Easement Agreement, by and between the Phase II Association, as grantor, and Purchaser, as grantee.

(iv) Easement Agreement, by and between the Phase III Association, as grantor, and Purchaser, as grantee.

(v) Termination of the Declaration of Covenants, Conditions and Restrictions for the Mutual Water and Sewer System for the Ivanhoe Club by and between Seller and Brook-Ridge and all other parties required under the Water and Sewer Declaration.

(vi) Termination of Seller's obligation to provide water and sanitary sewer service to Laser pursuant that certain Agreement, dated as of November 6, 1990, by and between Seller and Laser.

(vii) A release of lien and/or subordination agreement executed by Bank One, NA, with respect to its interests in the Club Water and Sewer Assets (the "Bank One Release").

(viii) Quit Claim Bill of Sale and Quit Claim Deed, from Brook-Ridge, Laser, First State Bank Trustee, IDLP, the Phase II Association and the Phase III Association, in favor of Purchaser, conveying all of their right title and interest, if any, in and to the Water and Sewer System wherever located within the Development (the agreements in subparagraphs (i) through (viii) are collectively, the "Ancillary Documents").

(b) The Illinois Commerce Commission (the "ICC") shall have entered an Order, no longer subject to appeal, acceptable in form and content to Purchaser in its sole discretion which: (A) grants to Purchaser a Certificate of Public Convenience and Necessity, authorizing Purchaser to provide water and sewer service within the Development; (B) approves the provisions of Section 20(b)(i) of this Agreement with regard to water and sewer rates charged to customers within the Development; (C) authorizes Purchaser to collect the Access Fee and pay the same to Seller in accordance with Section 20(b)(ii); (D) finds that any access fees with respect to the Club Water and Sewer System are reasonable, above-the-line operating costs for rate-making purposes; and (E) approves the accounting treatment for the Water and Sewer System to be acquired by Purchaser (such approvals are collectively referred to herein as the "ICC Approval").

(c) To the extent required by applicable Law, the County of Lake Department of Building and Zoning (the "Zoning Department") shall have amended the current Conditional Use Permit Number 91-248-RS issued January 18, 1991 and Conditional Use Permit Number 91-258-RS issued July 11, 1991, or in lieu thereof, shall have issued new such permits in favor or Purchaser, in order to evidence the Zoning Department's authorization of the Purchaser's ownership and operation of the Water and Sewer System in accordance with the terms of this Agreement (the "Zoning Department Approval")

(d) The execution of any other agreement or consent required by a third party or applicable Law reasonably necessary in order to effect the transactions contemplated under this Agreement, the Ancillary Documents and related agreements.

(e) Seller shall have performed, satisfied and complied with all covenants, agreements and conditions in this Agreement required to be performed or complied with by it on or before the Closing Date, and the representations and warranties of Seller in this Agreement shall be true and correct as of the Closing Date, or if not true and correct, shall be otherwise approved in writing by Purchaser in Purchaser's sole discretion; provided however, that to the extent representations and warranties are not true at Closing through no fault of Seller, Purchaser's remedy for such default, notwithstanding the terms of Section 16(a) herein, shall be limited to a return of the Earnest Money.

(f) Seller shall have delivered to Purchaser all of Seller's Closing Deliveries (as described below).

9. Conditions Precedent to Seller's Obligation to Close.

The obligation of Seller under this Agreement to consummate the transactions contemplated herein are subject to the satisfaction, at or before the Closing, of all of the following conditions, any one or more of which may be waived in whole or in part in writing at the option of Seller:

(a) The Phase II Association and the Water and Sewer Association shall have consented in writing to the transfer of the south 1400 feet of the Club Property and equipment thereon to Purchaser in accordance with the terms of this Agreement.

(b) Purchaser shall have performed, satisfied and complied with all covenants, agreements and conditions in this Agreement required to be performed or complied with by it on or before the Closing Date, and the representations and warranties of Purchaser in this Agreement shall be true and correct as of the Closing Date.

(c) Purchaser shall have delivered to Seller all of Purchaser's Closing Deliveries (as described below).

(d) Purchaser shall have received (i) consents required for the execution of the Ancillary Documents and full execution of the same, (ii) the ICC Approval, (iii) the Zoning Department Approval, and all other third party approvals as may be necessary in order to permit Purchaser's ownership and operation of the Water and Sewer System in accordance with the terms of this Agreement, including, without limitation, Section 20(b)(i) and 20(b)(ii) herein.

10. Closing Date. Provided that all conditions set forth in Section 8 and Section 9 have been satisfied, the transactions contemplated hereby shall be consummated (the "Closing") on the date which is thirty (30) days after the date that the ICC Approval is obtained, or on such other date as mutually agreed upon by Purchaser and Seller. The date of the Closing is referred to as the "Closing Date". The Closing shall take place at the office of Purchaser's attorneys at 77 West Wacker Drive, Suite 3500, Chicago, Illinois 60601.

11. Seller's Closing Deliveries. On the Closing Date, Seller shall deliver the following items to Purchaser:

(a) Instruments of conveyance as shall be necessary and effective to transfer, assign to, and vest in, Purchaser good and marketable title to the Club Water and Sewer Assets and all rights to operate the Club Water and Sewer System consistent with Seller's past practice, including the following documents in forms mutually agreed to by Seller and Purchaser:

(1) a bill of sale with warranties as to title conveying the Club Water and Sewer System (to the extent portions of the Club Water and Sewer System are deemed to be personal property under applicable Law):

(2) a special warranty deed conveying the Club Water and Sewer System (to the extent portions of the Club Water and Sewer System are deemed to be real or mixed property under applicable Law and subject to the Functional Component Limitation).

(3) the Assignment of Easements and the Grant of Easement conveying the Easements.

(4) An assignment of the Contracts and Intangible Property.

(5) A special warranty deed conveying the Lagoon Tract subject to the Right of First Offer For the Lagoon Tract.

(6) A recordable instrument evidencing the Right of First Offer Regarding the Adjacent Tract, as further described in Section 19.

(b) Bank One Release.

(c) Copies or originals or all Contracts and other documents constituting the Club Water and Sewer Assets.

(d) A certificate, in a form approved in writing by Purchaser, (x) providing a true, correct and complete list of the Contracts and Intangible Property, if any; and (y) including an authorized and valid signature on behalf of each third party to the Contracts, if any, which shall confirm that all representations and warranties of Seller set forth in Section 6(i) herein with respect to such contract are true and correct, and that there is no defense, counterclaim or asserted set off by such party under the contract, and that Seller and such party are in compliance with the contract terms, and to the extent that such party's consent is required to an assignment of such contract, such consent.

(e) A certificate dated as of the Closing Date and duly executed by Seller, certifying that the representations and warranties of Seller in this Agreement are true and correct as of the Closing Date as if made on and as of the Closing Date, or if not true and correct, approved in writing by Purchaser in its sole discretion; provided however, that to the extent representations and warranties are not true at Closing through no fault of Seller, Purchaser's remedy for such

default, notwithstanding the terms of Section 16(a) herein, shall be limited to a return of the Earnest Money.

(f) A certified resolution of the board of directors of Thorngate evidencing that Seller is authorized to execute this Agreement and to consummate the transaction contemplated hereunder and designating those persons authorized to execute and deliver all necessary documents on behalf of Seller at the Closing.

(g) A quit claim bill of sale and quit claim deed, conveying all of Seller's interest, if any, in the portions of the Water and Sewer System located within the Residential Property.

(h) Such other documents, instruments, certifications and confirmations as may be reasonably required by Purchaser or the Title Company to fully effect and consummate the transaction contemplated hereby.

(i) Keys to all doors and openings to the Club Water and Sewer System, which keys shall be properly tagged for identification.

(j) Possession and operating control of the Club Water and Sewer Assets.

To the extent that any of Seller's Closing Deliveries are documents prepared in recordable form, such documents shall be recorded with the Lake County Recorder on the Closing Date or as soon as reasonably practicable after the Closing Date.

12. Purchaser's Closing Deliveries. On the Closing Date, Purchaser shall deliver to Seller the following items, all of which shall be in form, execution and substance satisfactory to Seller and Seller's attorneys:

(a) The balance of the Purchase Price, if necessary after the Earnest Money Deposit has been applied and all required prorations and adjustments have been made. Seller and Purchaser hereby acknowledge that (i) it is unlikely that any balance of the Purchase Price would be owed on the Closing Date due to the amount of the Purchase Price and the Earnest Money Deposit, and (ii) any balance of the Earnest Money Deposit which remains after the Closing shall be promptly delivered to Purchaser.

(b) Purchaser's counterpart to any of Seller's Closing Deliveries.

(c) A certificate dated as of the Closing Date and duly executed by Purchaser, certifying that the representations and warranties of Purchaser contained in this Agreement are true and correct as of the Closing Date as if made on and as of the Closing Date.

(d) A certified resolution of the board of directors of Purchaser evidencing that Purchaser is authorized to execute this Agreement and to consummate the transaction contemplated hereunder and designating those persons authorized to execute and deliver all necessary documents on behalf of Purchaser at the Closing.

(e) A recordable instrument evidencing the Right of First Offer Regarding the Lagoon Tract (as hereinafter defined), as further described in Section 18.

(f) Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by Seller or the Title Company to fully effect and consummate the transaction contemplated hereby.

(g) Copies of all documents received by Purchaser in satisfaction of the Purchaser's Conditions Precedent under Section 8 herein certified by Purchaser as being true and correct copies of the originals in its possession.

To the extent that any of Purchaser's Closing Deliveries are documents prepared in recordable form, such documents shall be recorded with the Lake County Recorder on the Closing Date or as soon as reasonably practicable after the Closing Date.

13. Closing Costs.

(a) Seller shall be responsible for payment of: (i) all State of Illinois, Lake County and municipal transfer taxes to the extent that sellers are required by Law to pay such taxes; (ii) legal fees and expenses incurred by Seller's attorneys in the review and negotiation of this Agreement, the Ancillary Documents and related agreements, except as provided otherwise under Section 21(p); and (iii) any other charges which, by Law must be paid by sellers.

(b) Purchaser shall be responsible for the payment of: (i) all State of Illinois, Lake County and municipal transfer taxes to the extent that purchasers are required by Law to pay such taxes; (ii) costs required in connection with the preparation and issuance of a title policy or survey ordered by Purchaser with respect to the Club Water and Sewer Assets; (iii) recording fees; (iv) legal fees and expenses incurred by Purchaser's attorneys in the review and negotiation of this Agreement, the Ancillary Documents and related agreements, except as provided otherwise in Section 21(p); and (v) any other charges which, by custom or Law are paid by purchasers.

14. Closing Adjustments.

(a) **Proratable Items.** At Closing, general and special real estate taxes, and installments of assessments not due and payable as of the Closing, and all other proratable items, if any, (collectively the "Proratable Items") shall be prorated as of the Closing Date based upon 110% of the most recent ascertainable bills. All prorations shall be final. Seller shall be responsible for all Proratable Items relating to periods prior to the Closing Date regardless of when a Proratable Item is due and payable, and Purchaser shall be responsible for all Proratable Items relating to periods from and after the Closing Date.

(b) **Accounts Receivables.** Purchaser shall not be required to purchase any accounts receivable from Seller for monies owed to Seller for the period prior to the Closing Date.

(c) **Capital Expenditures.** Provided and only to the extent that Purchaser has previously approved in writing such amounts, at Closing Purchaser shall reimburse Seller for any

capital expenditures actually incurred by Seller during the period commencing as of the date hereof and ending on the Closing Date.

The obligations of this Section 14 shall survive the Closing and the delivery of the conveyance documents described in this Agreement.

15. Indemnification.

(a) **Seller's Indemnity.** Except for liabilities specifically assumed by Purchaser pursuant to the terms of this Agreement, Seller shall indemnify and defend (by counsel reasonably acceptable to Purchaser) and hold Purchaser and its officers, shareholders, directors, and employees (collectively, "Purchaser's Indemnified Parties") harmless of, from and against any and all losses, liabilities, expenses, fines, penalties, damages and other costs (including amounts paid in settlement, reasonable costs of investigation, reasonable attorneys' fees and other legal expenses resulting from claims, whether or not ultimately successful) suffered or incurred directly or indirectly by Purchaser or Purchaser's Indemnified Parties, or which Purchaser or any of Purchaser's Indemnified Parties may suffer or incur directly or indirectly, arising out of, with respect to, or based upon:

(i) the inaccuracy in any respect of any of Seller's representations or warranties subject to the terms of Section 8(e) and Section 11(e) herein;

(ii) any closing obligations, liabilities or charges of Seller not expressly assumed by Purchaser except to the extent that Purchaser receives a credit for the same at the Closing; or

(iii) the ownership, operation, repair, replacement and maintenance of the Club Water and Sewer Assets or any portion thereof on or prior to the Closing Date, with the exception of: (x) obligations regarding operation, repair, replacement and/or maintenance which are expressly reserved to Purchaser under the Maintenance Agreement (in which event the terms of the Maintenance Agreement shall govern and Seller shall be relieved of its indemnity liability under this Section 15(a)(iii) with respect to such obligations subject to the terms of the Maintenance Agreement); and (y) any expenses voluntarily incurred by Purchaser to correct the flow characteristics of the Effluent Line so as to cause the effluent to properly flow from the Lagoon Tract to the Irrigation Pumping Station. Notwithstanding the foregoing, in no event shall Purchaser be obligated to correct or repair the flow characteristics of the Effluent Line unless required by applicable Laws to do so.

(b) **Purchaser's Indemnity.** Except for liabilities specifically assumed by Seller pursuant to the terms of this Agreement, Purchaser shall indemnify (by counsel reasonably acceptable to Seller) and hold Seller and its officers, shareholders, directors, and employees (collectively, "Seller's Indemnified Parties") harmless of, from and against any and all losses, liabilities, expenses, fines, penalties, damages and other costs (including amounts paid in settlement, reasonable costs of investigation, reasonable attorneys' fees and other legal expenses resulting from claims, whether or not ultimately successful) suffered or incurred directly or

indirectly by Seller or Seller's Indemnified Parties, or which Seller or any of Seller's Indemnified Parties may suffer or incur directly or indirectly, arising out of, with respect to, or based upon:

(i) the inaccuracy in any respect of any of Purchaser's representations or warranties;

(ii) any obligations, liabilities or charges of Purchaser that are expressly assumed by Purchaser or for which Purchaser receives a credit at the Closing; or

(iii) (x) obligations regarding operation, repair, replacement and/or maintenance which are expressly reserved to Purchaser under the Maintenance Agreement (in which event the terms of the Maintenance Agreement shall govern with respect to such obligations subject to the terms of the Maintenance Agreement) and (y) the ownership, operation, repair, replacement and maintenance of the Club Water and Sewer Assets, or any portion thereof, by Purchaser from and after the Closing Date.

16. **Default.**

(a) **Material Default by Seller.** If Seller materially defaults under this Agreement and such default continues for a period of ten (10) days after written notice from Purchaser to Seller concerning the default, then Purchaser shall be entitled to either (i) terminate the Agreement and receive the Earnest Money and reimbursement up to \$50,000 of Purchaser's actual and reasonable out-of-pocket expenses incurred in connection with the proposed sale contemplated under this Agreement, or (ii) institute an action for specific performance. Whether Purchaser elects remedy (i) or (ii) under this Section 16(a), the remedy it elects shall be its sole and exclusive remedy.

(b) **Material Default by Purchaser.** If Purchaser materially defaults under this Agreement and such default continues for a period of ten (10) days after written notice from Seller to Purchaser concerning the default, then, as Seller's sole and exclusive remedy, the Earnest Money Deposit shall be paid over to and retained by Seller as liquidated damages, and thereafter, neither Seller nor Purchaser shall have any further rights or obligations under this Agreement. The parties acknowledge and agree that the amount of actual damages which might be incurred by Seller upon a Purchaser default is uncertain in amount and difficult to ascertain, and that the Earnest Money Deposit is a fair estimate of those damages which has been agreed to by Seller and Purchaser in an effort to cause the amount of said damages to be certain.

(c) Notwithstanding any such limitation on damages, any suit for breach of any representation, warranty or covenant contained in this Agreement or any other action arising under this Agreement must be filed within three (3) years of the Closing Date or be forever barred.

(d) An immaterial default by either party shall not relieve the defaulting party of the obligation to cure such default and the Closing may be delayed until such time as the default is cured or the non-defaulting party is satisfied as to any remedy offered by the defaulting party and an agreement as to any such remedy is made by the parties in writing.

Except as otherwise provided in Section 21(o) herein, damages of both Seller and Purchaser are to be limited to the remedies described in this Section 16.

17. **Casualty; Condemnation.** If prior to the Closing Date any or all of the improvements which constitute a part of the Club Water and Sewer Assets are damaged or destroyed by fire or other casualty (collectively referred to herein as a "Casualty"), or all or any portion of the Club Water and Sewer Assets is taken by exercise of the power of eminent domain or any proceedings are threatened or instituted to effect such a taking (collectively referred to herein as a "Condemnation"), Seller shall immediately give Purchaser written notice of such occurrence, and Purchaser may, within fourteen (14) days after receipt of such notice, elect to: (a) terminate this Agreement, in which event the Earnest Money shall be promptly delivered to Purchaser, and thereafter, neither Seller nor Purchaser shall have any further rights or obligations under this Agreement; or (b) close the transaction contemplated hereby as scheduled (except that if the Closing Date is less than fourteen (14) days following Purchaser's receipt of such notice, then the Closing shall be delayed until fourteen (14) days after Purchaser's receipt of such notice, in which event, in the case of a Casualty, Purchaser shall have the right to participate in the adjustment and settlement of any insurance claim relating to the Casualty and at the Closing Seller shall assign to Purchaser all of Seller's interest in and to any and all insurance proceeds with respect to the Casualty, or in the case of a Condemnation, at the Closing Seller shall assign and/or pay to Purchaser all awards or other damages to which Seller is entitled or of which Seller has already collected or claimed with respect to such Condemnation.

18. **Seller's Right of First Offer Regarding the Lagoon Tract.** Purchaser agrees to grant Seller a right of first offer regarding the Lagoon Tract (the "Right of First Offer Regarding the Lagoon Tract") effective for a period of twenty (20) years after the Closing Date. In the event Purchaser decides to sell the Lagoon Tract, it will provide Seller with the first opportunity to purchase the Lagoon Tract at the price and on the terms proposed by any bona fide third party purchaser. The further terms and conditions of the Right of First Offer Regarding the Lagoon Tract shall be set forth in a separate recordable instrument, the form and substance of which shall be mutually acceptable to both Seller and Purchaser.

19. **Purchaser's Right of First Offer Regarding the Adjacent Tract.** Seller agrees to grant Purchaser a right of first offer regarding the approximately ten (10) acre tract of land located adjacent to the Lagoon Tract (the "Adjacent Tract") (such right being referred to herein as the "Right of First Offer Regarding the Adjacent Tract") effective for a period of twenty (20) years after the Closing Date. In the event Seller decides to sell the Adjacent Tract, it will provide Purchaser with the first opportunity to purchase the Adjacent Tract at the price and on the terms proposed by any bona fide third party purchaser. The further terms and conditions of the Right of First Offer Regarding the Adjacent Tract shall be set forth in a separate recordable instrument, the form and substance of which shall be mutually acceptable to both Seller and Purchaser.

20. **Post-Closing Covenants Regarding the Water and Sewer System.** Provided that the transaction contemplated herein closes in accordance with the terms of this Agreement, the following covenants shall apply:

(a) **Exclusive Supplier of Water and Sewer Services.** Provided that the rate for use of the Water and Sewer System is in accordance with Section 20(b)(i) herein, Seller shall

not: (a) enter into any contract or other arrangement with any third party (other than Purchaser); (b) exercise any rights it has under any documents recorded against all or any part of the Development; or (c) take any other action which would interfere with Purchaser's ability to (i) serve as the exclusive provider of the water (with the exception of water used solely for irrigation systems on the Club Property) and sanitary sewer services to the Development; (ii) operate, manage, maintain, repair or reconstruct the Water and Sewer System; or (iii) expand all or any portion of the Water and Sewer System (including "tying in" or otherwise integrating the existing Water and Sewer System with another system owned by Purchaser), provided that such expansion is in accordance with the standards set forth in the rules and regulations of the ICC and all other Laws of governmental authorities having jurisdiction over the Water and Sewer System.

(b) Payment for Use of the Water and Sewer System.

(i) Subject to ICC approval, Seller and Purchaser hereby agree that the rates for the use of the Water and Sewer System for the first ten (10) years after the Closing Date shall be no higher than the then current water and sewer rates charged for similar water and sewer services by the Village of Mundelein, Illinois (the "Village") to residential dwellings located within the legal boundaries of the Village (the "Village Rate"). Thereafter, the applicable rates for use of the Water and Sewer System shall be the rates approved from time to time by the ICC.

(ii) Subject to ICC approval, Purchaser will collect, prior to a lot owner's connection to the Water and Sewer System, (x) the \$12,000 tap-in fee currently in place for the Phase II Area (as described in the Phase II Plat), and (y) the \$12,000 tap-in fee for the Phase III Area to the extent required under a currently effective instrument or document which is legally binding on lot owners in the Phase III Area and which is disclosed to Purchaser by Seller prior to the Closing. Purchaser will, in turn, pay any funds received as tap-in fees to Seller. This practice shall continue until an Access Fee has been paid for all residential lots in Phase II and, to the extent required, Phase III. In the event the ICC does not permit Purchaser to collect the Access Fee, Purchaser shall not interfere with Seller's efforts to continue to do so.

(c) **Effluent.** In accordance with past practice by Seller with respect to its acceptance of effluent from the Effluent Line, Seller shall accept, without charge, delivery from Purchaser the effluent via the Effluent Line from the Water and Sewer System for discharge at the Club Irrigation System until such time that Purchaser elects to obtain and does obtain an NPDES Permit from the Illinois Environmental Protection Agency permitting Purchaser to discharge the effluent into a nearby flowing creek. In the event that after the Closing Purchaser elects to expand the lagoon system above its current capacity of 245 homes and Purchaser continues to use the spray irrigation system, Purchaser shall, prior to its expansion of the lagoon system, pay or reimburse Seller for all reasonable costs to add additional irrigation systems to the extent required to irrigate the golf course in a manner substantially similar to the way in which it was irrigated prior to Purchaser's expansion of the lagoon system.

(d) **Future Facility Construction.** In the event that Purchaser finds it necessary to construct within the Easements on the Club Property (granted to it pursuant to the Grant of Easement) any significant additional utility facilities, Purchaser shall notify Seller about the proposed construction, seek input from it, and construct such facilities in a manner which shall

not unreasonably affect the developability, marketability, value or current use of the Club Property, provided, however, that no above ground improvements shall be constructed on the Club Property without the prior express written approval of Seller and Purchaser shall take all reasonable actions to repair any damage to the Club Property caused by it in the exercise of its rights under the Grant of Easement.

(e) **Obligations Survive the Closing.** The obligations set forth in this Section 20 shall survive the Closing and the delivery of the conveyance documents.

21. **Miscellaneous.**

(a) **Brokerage.** Each party represents to the other that it has not dealt with any broker or finder with respect to the transaction contemplated in this Agreement. Each party shall indemnify and hold the other party harmless from and against any claim for brokerage commissions or other like fees asserted by any third party claiming by, through, or under such party with respect to the transaction contemplated in this Agreement.

(b) **Notices.** Any notice, request or other document (collectively, a "Notice") given under this Agreement shall be in writing and delivered (i) personally, (ii) by telecopy, (iii) by nationally recognized overnight courier service, or (iv) sent by United States registered or certified mail, return receipt requested, postage prepaid, and in all cases addressed to the parties at the applicable addresses set forth below. A Notice shall be effective (i) upon receipt if delivered personally, (ii) upon confirmation of complete receipt if given by telecopy during normal business hours (or the next business day if not confirmed during normal business hours), (iii) on the next business day if deposited with a nationally recognized overnight courier service, prepaid, or (iv) three business days after deposit in the U.S. mail if mailed as registered or certified mail, return receipt requested, postage prepaid. A party may change its address for receipt of Notices by giving notice of such change in accordance with this Section 21(b).

If to Purchaser:

Consumers Illinois Water Company
1000 South Schuyler Avenue
Kankakee, Illinois 60901-0152
Attention: Mr. Terry J. Rakocy, President
Fax: 815.935.8809

With a copy to:

Jones, Day, Reavis & Pogue
77 West Wacker, Suite 3500
Chicago, Illinois 60601-1692
Attention: Boyd J. Springer, Esq.
Fax: 312.782.8585

If to Seller:

Thorngate Country Club, Inc.
28846 North Thorngate Drive
Ivanhoe, Illinois 60060-0505
Attention: Mr. Richard Ackman, General Manager
and Chief Operating Officer
Fax: 847.970.3811

With a copy to:

Eiden & O'Donnell, Ltd.
230 Center Drive, Suite 102
Vernon Hills, Illinois
Attention: Robert O'Donnell
Fax: 847.367.2758

(c) **Time for Performance.** Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday, such time for performance shall be extended to the next business day. Otherwise all references herein to "days" shall mean calendar days.

(d) **Time is of the Essence.** Time is of the essence in all things pertaining to performance of this Agreement.

(e) **Severability.** If any provision of this Agreement or application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid to any extent, the remainder of this Agreement or the application of such provision to a person or circumstance other than those to which it is determined to be invalid, shall not be affected and each provision shall be valid and enforced to the fullest extent permitted by Law, provided that the intent of this Agreement and the benefits to each party can still be accomplished.

(f) **Further Assurances.** The parties shall execute and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as necessary or desirable to fully consummate the transaction contemplated in this Agreement.

(g) **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws (but not the conflict of laws) of the State of Illinois.

(h) **Construction.** This Agreement and any other agreement referred to or contemplated herein shall not be construed more strictly against one party solely because it was prepared primarily by counsel for such party. The parties hereby acknowledge that each contributed substantially and materially to the preparation of this Agreement. All exhibits and schedules referenced in this Agreement are attached hereto and deemed a part hereof. The paragraph and section headings in this Agreement are for reference only and shall not affect the interpretation of any provisions herein. Words in the singular shall be held and construed to include the plural and words in the plural shall be held and construed to include the singular, unless the context requires otherwise. The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without limitation." Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders.

(i) **Entire Agreement, Amendment and Waivers.** This Agreement contains the entire agreement and understanding of the parties with respect to the sale of the Club Water and Sewer Assets superseding all prior agreements or understandings regarding the same. This Agreement shall not be amended, modified or discharged, nor may any of its terms be waived except by an instrument in writing signed by the party to be bound thereby.

(j) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(k) **Assignment and No Third Party Rights.** Except as herein expressly provided, the respective rights and obligations of each of the parties under this Agreement shall not be assignable by any of the parties hereto without the written consent of the other. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as aforesaid, this Agreement shall not be construed as creating any rights or benefits by subrogation or otherwise, in any person other than the parties hereto.

(l) **Binding Effect.** This Agreement and all of the provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(m) **Confidentiality.** Neither party shall disclose (except as required by Law or order by a court of competent jurisdiction or as required to obtain ICC Approval or other governmental authorization) the terms and provisions of this Agreement without the prior written approval of the other and both parties shall use all reasonable efforts to keep the details of the transaction contemplated hereby strictly confidential; provided however, each party may disclose the terms and provisions of this Agreement to its legal counsel, accountants and other advisors working on the transaction contemplated by this Agreement.

(n) **Risk of Loss.** Legal title, equitable title and risk of loss with respect to the Club Water and Sewer Assets shall not pass to Purchaser until the Club Water and Sewer Assets are transferred to Purchaser at the Closing in accordance with the terms, conditions and provisions of this Agreement.

(o) **Costs of Enforcement.** In the event any action or proceeding is brought in connection with this Agreement, the prevailing party in such action or proceeding shall be entitled to have all of its reasonable court costs, attorneys' and paralegals' fees and expenses, expenditures for documentary and expert evidence, stenographer's charges and all other reasonable costs and expense incurred in connection with such action or proceeding, to be paid for or reimbursed by the non-prevailing party in such action or proceeding. This right to collect such costs is separate and apart from any liquidated damages and in no way invalidates liquidated damages provisions herein.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Assets as of the date and year first above written.

SELLER:

THORNGATE COUNTRY CLUB, INC., an
Illinois corporation

By: 

Print Name: Thomas Hohenadel

Title: President

By: 

Print Name: Edward Werdell

Title: Treasurer

BANCO POPULAR, ILLINOIS, not personally
but solely as Trustee

By: SEE RIDER ATTACHED HERETO
AND BY THIS REFERENCE

Print Name: MADE A PART HEREOF

Title: _____

PURCHASER:

CONSUMERS ILLINOIS WATER COMPANY,
an Illinois corporation

By: 

Print Name: Terry J. Rakocy

Title: President